

OPEN PUBLIC MEETINGS & INTRO TO PUBLIC RECORDS

**LEOFF 2 Board
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PURPOSE OF THE LAWS

- ◆ People do not yield their sovereignty to the agencies which serve them.
- ◆ Citizens have access to agencies' decision making so they can remain informed about the instruments they have created.

PURPOSE OF THE LAWS

- ◆ Citizens remain informed so they may maintain control over the instruments they have created.

WASHINGTON'S OPEN PUBLIC MEETINGS ACT

- ◆ Passed in 1971.
- ◆ Does not apply to the courts or the legislature.
- ◆ Requires meetings to be open gavel-to-gavel.

MEETINGS MUST BE OPEN

- ◆ Meetings of “governing bodies must be open.”
 - ◆ Multimember boards or other policy and rulemaking bodies
 - ◆ Committees, when acting on behalf of the governing body, conducting hearings, or taking testimony or public comment

SCOPE OF THE ACT

- ◆ Very broad coverage.
- ◆ Covers state boards, commissions, committees, departments, educational institutions, and agencies.

DOES NOT APPLY TO:

- ◆ state agencies covered by a single head (e.g., DRS, L&I).
- ◆ administrative meetings of agency staff
- ◆ actions taken under the Administrative Procedure Act, such as rulemaking

Anyone Can Attend

- ◆ Reasonable rules of conduct can be set
- ◆ Cameras and tape recorders are permitted unless disruptive
- ◆ Can't place conditions on people for attending

What constitutes a meeting?

- ♦ A quorum of 6 establishes a meeting
- ♦ Meetings where “action” is taken must be open & properly noticed
- ♦ Action includes:
 - ♦ Public testimony
 - ♦ All deliberations
 - ♦ Discussions
 - ♦ Reviews
 - ♦ Evaluations
 - ♦ Final action
- ♦ Avoid inadvertent meetings, including serial discussions and e-mail

REGULAR MEETINGS

- ◆ Recurring meetings of the public body
- ◆ Must adopt regular schedule by statute or rule
- ◆ Must publish schedule in the state register in or before January each year
- ◆ Changes to regular meeting schedule must be published 20 days in advance

SPECIAL MEETINGS

- ◆ Called by presiding officer or majority of members
- ◆ Written notice must be given to:
 - ◆ Each member of governing body
 - ◆ Each local newspaper, radio, and TV station which has requested notice in writing

SPECIAL MEETING NOTICES

- ◆ Delivered at least 24 hours in advance
- ◆ Must specify:
 - ◆ Time
 - ◆ Place
 - ◆ Business to be transacted (agenda)
- ◆ No final disposition of any other matter

EXECUTIVE SESSIONS

- ◆ Receive and evaluate complaints or charges against a public employee
- ◆ Review employee performance
- ◆ Evaluate qualifications of a job applicant
- ◆ Meet with legal counsel relating to enforcement action, litigation, or certain legal risks
- ◆ Discuss confidential financial information (State Investment Board)

Convening Executive Sessions

- ◆ Presiding officer publicly announces
 - ◆ purpose of the executive session
 - ◆ time it will be concluded
- ◆ Time can be extended if announced to the public

PENALTIES FOR VIOLATING THE LAW

- ◆ Superior Court Judge can impose a \$100 civil penalty against each member.
- ◆ Judge will award attorney fees.
- ◆ Any action taken at an improperly convened or improperly closed meeting can be declared null and void.

PUBLIC DISCLOSURE LAW (OPEN PUBLIC RECORDS)

- ◆ Passed in 1972 as part of Public Disclosure Initiative
- ◆ All records open unless there is an exemption
- ◆ Burden of proof on public agency to show why record is not open

What is a public record?

- ◆ “Any writing which contains information relating to the conduct of government or the performance of any governmental or propriety function.”

What is a “writing”?

- ◆ All means of recording any form of communications
- ◆ Documents and papers
- ◆ Maps
- ◆ Photographs and film
- ◆ Sound recordings
- ◆ Electronic information
- ◆ Manuals
- ◆ Budgets

What about electronic records?

- ◆ If information exists in a database and can be produced in a format you request, it is a public record.
- ◆ Production of entire databases can be requested.

AGENCY OBLIGATIONS

- ◆ Provide fullest assistance
- ◆ Most timely possible action
- ◆ No fee for viewing
- ◆ Records must be available during customary business hours

AGENCY OBLIGATIONS

- ◆ Search fees prohibited
- ◆ Must honor requests by mail
- ◆ No release of lists of individuals for commercial purposes
- ◆ “Need to know” is not required

MAKING COPIES OF RECORDS

- ◆ Rules can be adopted to protect records and prevent disruption
- ◆ Copying fees can be imposed, not to exceed 15 cents per page without justification

RESPONDING TO A REQUEST FOR RECORDS

- ◆ Within five (5) days an agency must:
 - ◆ Provide the record
 - ◆ Acknowledge receipt of request and provide reasonable estimate of response time
 - ◆ Deny the request

RESPONDING TO A REQUEST FOR RECORDS

- ◆ Denials must include specific reasons (referencing statute) for denying the request

What records are exempt?

- ◆ Personal information in an employee's personnel file, if "private"
- ◆ Investigations by law enforcement agencies until completed
- ◆ Preliminary drafts, notes, memoranda, or recommendations in which opinions are expressed or policies discussed
- ◆ Materials protected by attorney client privilege

What happens if a request is denied?

- ◆ May file lawsuit in Superior Court where the record is located
- ◆ Burden on the agency to prove record is exempt

What happens if an agency loses in court?

- ◆ If court reverses the agency it must require:
 - ◆ Payment of court costs and attorney fees
- ◆ If court reverses the agency it may require:
 - ◆ Award \$5 to \$100 a day for each day the record inspection was unreasonably delayed

Retaining/Destroying Public Records

- ◆ Agencies must retain official records as required by law and must destroy records according to established schedules
- ◆ Be aware of what records you are creating or should retain
- ◆ Keeping records too long can be as problematic as not keeping them at all or not long enough